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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 150610515-5515-01]

RIN 0648-BF16

Fisheries of the Northeastern United States; Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: Based on Atlantic States Marine Fisheries Commission recommendations, we, the National Marine Fisheries Service, are proposing to modify the Lobster Conservation Management Area 4 seasonal closure and are requesting comment. This action is necessary to reduce fishing effort in Area 4 by 10 percent. This action is intended to ensure fishery regulations for the lobster fishery in Federal waters remain consistent with the Commission's Interstate Fishery Management Plan for American Lobster and previously implemented state measures and the intent of the Atlantic Coastal Fisheries Cooperative Management Act.

DATES: Comments must be received on or before *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2015-0075, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0075, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on American Lobster Proposed Rule.”

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Fishery Policy Analyst, (978) 281-9122.

SUPPLEMENTARY INFORMATION:

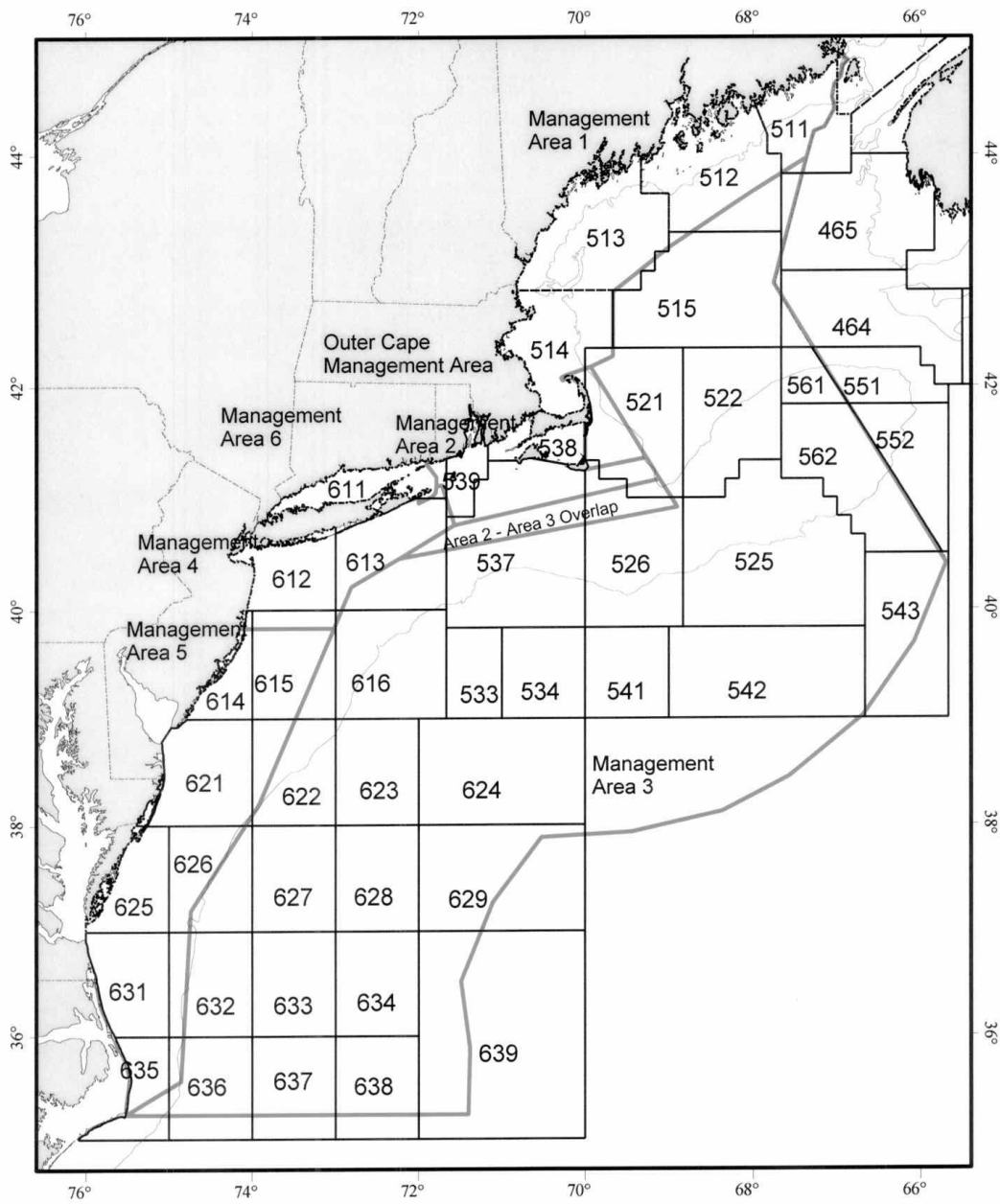
Background

The American lobster fishery is managed by the Commission under Amendment 3 to the Interstate Fishery Management Plan for American Lobster (ISFMP). Since 1997, the Commission has coordinated the efforts of the states and Federal Government toward sustainable

management of the American lobster fishery. We manage the portion of the fishery conducted in Federal waters from 3 to 200 miles offshore, based on management recommendations made by the Commission.

The American lobster management unit is divided between three lobster stocks and seven Lobster Conservation Management Areas.

Figure 1. Lobster Conservation Management Area and Statistical Areas



The 2009 stock assessment indicated that the Southern New England American lobster stock, which includes all or part of six areas, is at a low level of abundance and is experiencing persistent recruitment failure, caused by a combination of environmental factors and continued fishing mortality. To address the poor condition of the Southern New England stock, the Commission adopted Addendum XVII to Amendment 3 of the ISFMP in February of 2012. The measures in Addendum XVII were intended to reduce fishing exploitation on the Southern New England lobster stock by 10 percent. Copies of the Addendum are available on the Commission's website at: <http://www.asmf.org>.

Consistent with the Commission's action in Addendum XVII, we issued complementary regulations (80 FR 2028; January 15, 2015) for Areas 2, 3, 4, and 5. Measures for Area 4 included mandatory v-notching requirement of egg-bearing female lobster and an annual seasonal closure from February 1-March 31. States, as required, came into compliance with Addendum XVII by January 1, 2013.

Proposed Measures

We are now proposing to change the Area 4 seasonal closure from February 1-March 31 to April 30-May 31, consistent with the Commission's recommendation. The American Lobster Technical Committee analyzed the effectiveness of the February 1-March 31 closure after it was implemented by the states and presented these results to the Commission in late 2014. The Technical Committee's analysis indicated that the February and March closure in Area 4 achieved only a 3.7-percent reduction in effort, falling short of the required 10-percent reduction. The Technical Committee recommended that the Lobster Board shift the annual seasonal closure from February 1-March 31 to April 30-May 31. The Technical Committee projected that this shift would achieve a 10.1-percent reduction in effort. The Lobster Board reviewed this analysis

and approved the Area 4 seasonal closure modification during several meetings in late 2014 and early 2015. The Lobster Board also recommended that all jurisdictions change the closure date to April 30-May 31 annually. New York and New Jersey (the two states bordering Area 4) have already adjusted their regulatory closure to this later date. In addition, the states have retained the 1-week grace period at the end of the seasonal closure to reset unbaited gear. They did not retain the 2-week grace period at the start of the closure and state regulations.

The affected states have already issued or are in the process of issuing regulations that comply with this change. We are proposing to shift the timing of the Area 4 seasonal closure, consistent with the Commission's recommendation.

Classification

This proposed rule has been preliminary determined to be consistent with the provisions of the Atlantic Coastal Act, the National Standards of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

This proposed rule does not contain policies with federalism implications as that term is defined in E.O. 13132. The proposed measures are based upon the American Lobster ISFMP that was created by and is overseen by the states. The proposed measures were a result of a modification to Addendum XVII measures, which was approved by the states, recommended by the states through the Commission for Federal adoption, and are in place at the state level. Consequently, NMFS has consulted with the states in the creation of the ISFMP, which makes recommendations for Federal action. Additionally, these proposed measures would not pre-empt state law and would do nothing to directly regulate the states.

This proposed rule does not contain a collection of information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA).

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires agencies to assess the economic impacts of their proposed regulations on small entities. The objective of the RFA is to consider the impacts of a rulemaking on small entities, and the capacity of those affected by regulations to bear the direct and indirect costs of regulation. We prepared an Initial Regulatory Flexibility Analysis (IRFA) for this action as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. The proposed management measure would affect small entities (i.e., Federal lobster permit holders) fishing in Southern New England, specifically in Area 4.

Description of the Reasons Why Action by NMFS is Being Considered

For a full description of the reasons why this action is being considered, please refer to the Background section of the preamble. The Commission has recommended a change to the Area 4 seasonal closure, which is expected to better achieve the required effort reduction. The affected states have already issued regulations that comply with this change. Consistent with the Atlantic Coastal Act, we intend to implement regulations consistent with Commission recommendations and those promulgated by our partner states.

Statement of the Objectives of, and Legal Basis for, this Proposed Rule

The objective of the proposed action is to assist in the reduction of fishing exploitation by 10 percent as part of an overall effort to rebuild the Southern New England lobster stock. The legal basis for the proposed action is the ISFMP and promulgating regulations at 50 CFR part 697.

Description and Estimate of the Number of Small Entities to which the Proposed Rule would Apply

The RFA recognizes and defines three kinds of small entities: Small businesses; small organizations; and small governmental jurisdictions. The Small Business Administration (SBA) size standards define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for “small business” concerns. Size standards have been established (and recently modified) for all for-profit economic activities or industries in the North American Industry Classification System (NAICS). Designations of large and small entities were based on each entity’s 3-year average landings. For entities landing a plurality of revenue in shellfish (NAICS 111412), the threshold for “large” is \$5.0 million. For entities landing a plurality of revenue in finfish (NAICS 111411), the threshold for “large” is \$19.0 million. The number of directly regulated entities for purposes of analyzing the economic impacts and describing those that are small businesses is selected based on permits held. Since this proposed regulation applies only to the businesses that hold Area 4 permits, only those business entities are evaluated. Business entities that do not own vessels with directly regulated permits are not described.

Of the 47 small entities identified in the IRFA, 23 are considered a shellfish business, 12 are considered a finfish business, and 12 could not be identified as either because even though they had a lobster permit (in Area 4), they had no earned revenue from fishing activity. Because they had no revenue in the last 3 years, they would be considered small by default, but would also be considered as latent effort.

The entity definition used by the Northeast Fisheries Science Center Social Sciences Branch uses only unique combinations of owners. That is, entities are not combined if they have

a shared owner. Section 3 of the SBA defines affiliation as: Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated (13 CFR 121.103(f)).

The recent addition of vessel owner information to the permit data allows us to better define fishing “businesses.” The vessel ownership data identify all the individual people who own fishing vessels. Vessels can be grouped together according to common owners, which can then be treated as a fishing business, for purposes of RFA analyses. Revenues summed across all vessels in the group and the activities that generate those revenues form the basis for determining whether the entity is a large or small business. Ownership data are available for the potentially impacted by the proposed action from 2010 onward.

A person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, must apply for and receive a “confirmation of history” (CPH) if the fishing and permit history of such vessel has been retained lawfully by the applicant. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time. The ownership data based on the permits held do not contain information on CPH permits. A total of six CPH's exist for lobster Area 4.

While considering the number of affected entities, it is also worth noting that the vast majority of permit holders are either dually permitted (i.e., issued both a Federal and state permit) or otherwise subject to a state's lobster regulations. Accordingly, most all Federal permit holders will be required to comply with the proposed measures even if NMFS does not

implement these measures. In other words, these Federal permit holders will be obligated to comply with these measures and responsibilities attendant to their state permit regardless of whether these same measures are also required under their Federal permit. In fact, if we do not take the proposed action, these dual permit holders will be restricted for a total of 3 months (February 1-March 31 under the Federal permit and April 30-May 31 under the state permit). Neither the Technical Committee or the Lobster Board recommended this scenario.

Descriptions of Significant Alternatives which Minimize any Significant Economic Impact of Proposed Action on Small Entities

Due to the expected high rate of dual permitting and that the fact that all of the impacted states already comply with the revised Area 4 seasonal closure or soon will, the majority of Federal vessels must already abide by these requirements, and therefore have already been impacted. For those vessels not dually permitted, this change in the Area 4 seasonal closure can be expected to have limited economic impact to permit holders. Because the proposed regulations are consistent with Commission recommendations and current state regulations, alternative measures, such as maintaining the status quo, would likely create inconsistencies and regulatory disconnects with the states and would likely worsen potential economic impacts. Therefore, the status quo was not considered reasonable, and, for similar reasons, other alternatives that maintained disconnected state and Federal closures were not considered. The status quo is also inconsistent with the objectives of Addendum XVII to the ISFMP and, consequently, was not considered.

Reporting, Recordkeeping and Other Compliance Requirements

This action contains no new collection-of-information, reporting, or recordkeeping requirements.

Duplication, Overlap or Conflict with other Federal Rules

This action does not duplicate, overlap, or conflict with any other Federal Laws.

List of Subjects in 50 CFR Part 697

Fisheries, fishing.

Dated: July 30, 2015

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 697 is proposed to be amended as follows:

PART 697--ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

1. The authority citation for part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 *et seq.*

2. In § 697.7, revise paragraph (c)(1)(xxx)(B) to read as follows:

§ 697.7 Prohibitions.

* * * * *

(c) ***

(1) ***

(xxx) ***

(B) *Area 4 seasonal closure.* The Federal waters of Area 4 shall be closed to lobster fishing from April 30 through May 31.

(1) Lobster fishing is prohibited in Area 4 during this seasonal closure. Federal lobster permit holders are prohibited from possessing or landing lobster taken from Area 4 during the seasonal closure.

(2) All lobster traps must be removed from Area 4 waters before the start of the seasonal closure and may not be re-deployed into Area 4 waters until after the seasonal closure ends. Federal trap fishers are prohibited from setting, hauling, storing, abandoning, or in any way leaving their traps in Area 4 waters during this seasonal closure.

(i) Lobster fishers have a 1-week grace period from May 24 to May 31 to re-set gear in the closed area. During this grace period, re-set traps may not be re-hauled and any Federal lobster permit holder re-setting Area 4 traps during this grace period is prohibited from possessing on board any lobster regardless of the area from which the lobster may have been harvested.

(ii) [Reserved]

(3) Federal lobster permit holders are prohibited from possessing or carrying lobster traps aboard a vessel in Area 4 waters during this seasonal closure unless the vessel is operating subject to the grace period identified in paragraph (c)(1)(xxx)(B)(2)(ii) of this section or is transiting through Area 4 pursuant to paragraph (c)(1)(xxx)(B)(5) of this section.

(4) The Area 4 seasonal closure relates only to Area 4. The restrictive provisions of § 697.3 and § 697.4(a)(7)(v) do not apply to this closure. Federal lobster permit holders with an Area 4 designation and another Lobster Management Area designation on their Federal lobster

permits would not have to similarly remove their lobster gear from the other designated management areas.

(5) Transiting Area 4. Federal lobster permit holders may possess lobster traps on their vessels in Area 4 during the seasonal closure only if:

(i) The trap gear is stowed; and

(ii) The vessel is transiting the Area 4. For the purposes of this section, transiting shall mean passing through Area 4 without stopping, to reach a destination outside Area 4.

(6) The Regional Administrator may authorize a permit holder or vessel owner to haul ashore lobster traps from Area 4 during the seasonal closure without having to engage in the exempted fishing process in § 697.22, if the permit holder or vessel owner can establish the following:

(i) That the lobster traps were not able to be hauled ashore before the seasonal closure due to incapacity, vessel/mechanical inoperability, and/or poor weather; and

(ii) That all lobsters caught in the subject traps will be immediately returned to the sea.

(iii) The Regional Administrator may condition this authorization as appropriate in order to maintain the overall integrity of the closure.

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